IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 10057 OF 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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NEW HRIDAYKUNJ CO-OPERATIVE SOCIETY - Petitioner(s)

Versus

STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :
Shri S.H. Sanjanwala, Sr. Counsel,
with Shri Dilip Kanojia for Petitioner(s).
Shri M.R. Mengdey, AGP for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/04/2007

ORAL JUDGMENT

The parties are heard.

2. The petitioner, being aggrieved by order dated 4th October, 1999 passed by the State Government, reducing the earlier allotted area

of 2822.37 sq. mtrs. to 2179.00 sq. mtrs., is before this Court with manifold submissions. It is submitted that the Government, without providing an opportunity of hearing to the petitioner, reduced the allotted area and even otherwise did not make an attempt to see that whether, in fact, there were encroachments on the land or not.

3. The learned Counsel for the respondents, on the other hand, submits that the area of 2822.37 sq. mtrs. was allotted in favour of the petitioner, but, it was found on the spot that in view of the encroachment, allottable area was 2179.00 sq. mtrs. only, therefore, the State had passed the order on 4th October, 1999, reducing the allotted area.

4. The facts necessary for disposal of the present matter are that the present petitioner applied for grant of 2822.37 sq. mtrs. of land out of Survey No.135 of Amraiwadi; before any allotment could be made in favour of the petitioner, on 31st January, 1994, an area admeasuring 2990 sq. mtrs. out of Survey No.135 was allotted by the State in favour of Ravikiran Society. On 10th December, 1997, an additional area of 805 sq. mtrs. was again allotted out of Survey No.135 in favour of Ravikiran Society. On 24th December, 1998, the competent authority/State allotted an area admeasuring 2822.37 sq. mtrs. out of Survey No.135 in favour of the present society. The petitioner was required to deposit the value of the amount calculated at the rate of Rs.300/- per sq. mtr. The said amount was deposited. On 4th October, 1999, according to the submission of the petitioner, the State Government, without providing any opportunity of hearing to the petitioner, reduced the allotted area from 2822.37 sq. mtrs. to 2179 sq. mtrs. It would clearly appear from the records that the total area of Survey No.135 is 6847.87 sq. mtrs. Out of this, an area of 3795 sq. mtrs. was already allotted in favour of Ravikiran

Society. Out of the balance area, 2822.37 sq. mtrs. was allotted in favour of the petitioner. If these two allotted areas are added, the total would be 6617.37 sq. mtrs. which would be less than the original area of Survey No.135 admeasuring 6847.87 sq. mtrs. The State Government had simply stated that because there were some encroachments on the land, only 217 sq. mtrs. of land was left for allotment.

5. From the records, it would clearly appear and on being asked, the learned Counsel for the State submits that there is no answer to the petitioner's submission that he was not provided any opportunity of hearing.

6. In a case like the present, where allotment is reduced from the original allotted area, the rights of the petitioner would certainly be adversely affected. In a case like the present, non-grant of the opportunity of hearing would certainly vitiate the order because the petitioner could always submit to the authority that the area with the encroachment may be allotted in his favour or the State should take appropriate steps for removal of the encroachment. The State Government straightaway could not make such an order, which was to adversely affect the rights of the petitioner and its members.

7. Along with the counter affidavit, the respondents have submitted that despite an order of *status quo*, the respondents have made certain constructions over 400 sq. mtrs. of land. The Deputy Mamlatdar present in the Court informs that this area of 400 sq. mtrs would be part of 2179 sq. mtrs. and would not amount to encroachment of any other land. If that be so, the State Government was not required to create confusion by raising such pleadings.

8. The impugned order dated 4th October, 1999 passed by the State Government is hereby quashed. The impugned notice-cum-order dated 4th October, 1999 (Annexure-D) shall be deemed to be the notice to show cause and the petitioner would be allowed to submit his case before the said authority. After giving due opportunity of hearing to the petitioner, the respondents shall pass appropriate speaking order in accordance with law. The petitioner shall appear before the Secretary, Revenue Department, on 21st May, 2007. Either on the said date or within the period, as extended by the said Secretary, the petitioner shall file its reply and after giving due opportunity of hearing to the petitioner, the said Secretary shall decide the matter afresh in accordance with law.

9. The petition is allowed. Rule is made absolute to the aforesaid extent only. No costs.

[R.S.Garg, J.]

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